

AO 120 (Rev. 2/99)

TO: Mail Stop 8 Director of the U.S. Patent & Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Northern District of California on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. C-09-2193-EDL	DATE FILED May 19, 2009	U.S. DISTRICT COURT Office of the Clerk, 450 Golden Gate Ave., 16th Floor, San Francisco, CA 94102
PLAINTIFF HARRY J. LAST, ET AL.		DEFENDANT POOL COVER SPECIALISTS NATIONAL, INC.
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 5,349,707		
2 6,496,990		"Pls. See Attached Copy of Complaint"
3 7,114,297		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT		
CLERK Richard W. Wicking	(BY) DEPUTY CLERK Thelma Nudo	DATE May 19, 2009

Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

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Attorneys for Plaintiffs
HARRY J. LAST and AMCS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HARRY J. LAST, an individual, and AMCS,
INC., a California corporation,

Plaintiffs,

v.

POOL COVER SPECIALISTS NATIONAL,
INC., a Utah corporation,

Defendant.

C09 02193

COMPLAINT FOR PATENT
INFRINGEMENT AND
DECLARATORY JUDGMENT

DEMAND FOR JURY TRIAL

EDL

Plaintiffs HARRY J. LAST ("Last") and AMCS, INC. ("AMCS") (collectively, "Plaintiffs") state the following as their Complaint against Defendant POOL COVER SPECIALISTS NATIONAL, INC. ("PCS"):

NATURE OF THE ACTION

1. This is an action for patent infringement and declaratory judgment of non-infringement and invalidity. PCS has infringed and continues to infringe, contributes to the infringement of, and actively induces others to infringe Last's U.S. Patent Nos. 5,349,707 (the '707 patent) and 6,496,990 ("the '990 patent") (collectively, "the Last Patents"). PCS is the owner of record of U.S. Patent No. 7,114,297 ("the '297 patent"). AMCS seeks declaratory judgment of non-infringement and invalidity of the '297 patent.

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Richard W. Wieking
Clerk, U.S. District Court
Northern District of California
San Jose

1 **PARTIES**

2 2. Last is an individual residing in Kailua, Hawaii.

3 3. AMCS is a corporation organized and existing under the laws of
4 California, with its principal place of business at 200 Mayock Road, Gilroy, California 95020.
5 AMCS is the exclusive licensee of the Last Patents.

6 4. PCS is a corporation organized and existing under the laws of Utah, with
7 its principal place of business at 8553 S 2940 W, West Jordan, Utah 84088.

8 **JURISDICTION AND VENUE**

9 5. This action for patent infringement and declaratory judgment arises under
10 the Patent Laws of the United States, 35 U.S.C. § 1 *et seq.*, including 35 U.S.C. § 271 and 28
11 U.S.C. §§ 2201 and 2202. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§
12 1331 and 1338(a).

13 6. This Court has personal jurisdiction over PCS because PCS conducts
14 business in California and has infringed, has contributed to the infringement of, has actively
15 induced, continues to infringe, continues to contribute to the infringement of, and/or continues to
16 actively induce others to infringe the Last Patents as alleged below.

17 7. There is an actual and justiciable controversy within the meaning of 28
18 U.S.C. §§ 2201 and 2202 because on February 16, 2009 PCS sent AMCS a letter alleging that
19 AMCS infringed the '297 patent and threatening to sue AMCS in connection with that alleged
20 infringement.

21 8. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391
22 and/or 28 U.S.C. § 1400(b) because a substantial part of the events giving rise to Plaintiff's
23 claims occurred in this judicial district and because PCS is either resident in or otherwise subject
24 to personal jurisdiction in this judicial district.

25 **INTRADISTRICT ASSIGNMENT**

26 9. Pursuant to Civil L.R. 3-2(c) and the Court's Assignment Plan, because
27 this action is an Intellectual Property Action, it is properly assigned to any of the divisions in this
28 judicial district.

1 **FIRST CLAIM FOR RELIEF**

2 **(Patent Infringement of U.S. Patent No. 5,349,707)**

3 10. Plaintiffs reallege and incorporate by reference the allegations of
4 paragraphs 1 through 9, inclusive, as though fully set forth.

5 11. On September 27, 1994, U.S. Patent No. 5,349,707 entitled "Split Stop for
6 Automatic Swimming Pool Covers with a Hydraulic Drive System" was duly and legally issued
7 to Last. A true and correct copy of the '707 patent is attached hereto as Exhibit A and
8 incorporated by reference.

9 12. PCS (1) has infringed and continues to infringe one or more claims of the
10 '707 patent by making, using, offering to sell, selling (directly or through intermediaries), and/or
11 importing infringing products in this judicial district and elsewhere in the United States, and/or
12 (2) has contributed to the infringement of the '707 patent, and/or actively induced others to
13 infringe the '707 patent in this judicial district and elsewhere in the United States.

14 13. PCS' actions constitute infringement, active inducement of infringement,
15 and/or contributory infringement of the '707 patent in violation of 35 U.S. § 271.

16 14. Plaintiffs have sustained damages and will continue to sustain damages as
17 a result of the above-described acts of infringement.

18 15. PCS' continued infringement of the '707 patent has caused and will
19 continue to cause Plaintiffs irreparable harm unless enjoined by the Court.

20 16. PCS' infringement of the '707 patent has been willful and deliberate.

21 **SECOND CLAIM FOR RELIEF**

22 **(Patent Infringement of U.S. Patent No. 6,496,990)**

23 17. Plaintiffs reallege and incorporate by reference the allegations of
24 paragraphs 1 through 16, inclusive, as though fully set forth.

25 18. On December 24, 2002, U.S. Patent No. 6,496,990 entitled "Extruded
26 Track Construct Component System for Swimming Pool Cover Systems" was duly and legally
27 issued to Last. A true and correct copy of the '990 patent is attached hereto as Exhibit B and
28 incorporated by reference.

1 19. PCS (1) has infringed and continues to infringe one or more claims of the
2 '990 patent by making, using, offering to sell, selling (directly or through intermediaries), and/or
3 importing infringing products in this judicial district and elsewhere in the United States, and/or
4 (2) has contributed to the infringement of the '990 patent, and/or actively induced others to
5 infringe the '990 patent in this judicial district and elsewhere in the United States.

6 20. PCS' actions constitute infringement, active inducement of infringement,
7 and/or contributory infringement of the '990 patent in violation of 35 U.S. § 271.

8 21. Plaintiffs have sustained damages and will continue to sustain damages as
9 a result of the above-described acts of infringement.

10 22. PCS' continued infringement of the '990 patent has caused and will
11 continue to cause Plaintiffs irreparable harm unless enjoined by the Court.

12 23. PCS' infringement of the '990 patent has been willful and deliberate.

13 **THIRD CLAIM FOR RELIEF**

14 **(Declaration of Non-Infringement of U.S. Patent No. 7,114,297)**

15 24. Plaintiffs reallege and incorporate by reference the allegations of
16 paragraphs 1 through 23, inclusive, as though fully set forth.

17 25. PCS is the owner of record of U.S. Patent No. 7,114, 297 entitled "Radius
18 Corner Plate for a Pool." A true and correct copy of the '297 patent is attached hereto as Exhibit
19 C and incorporated by reference.

20 26. AMCS has not infringed and is not now infringing either literally or by
21 application of the doctrine of equivalents any claim of the '297 patent.

22 27. AMCS has not induced and is not now inducing or contributing to the
23 infringement of any claim of the '297 patent by others either directly or indirectly, or literally or
24 by application of the doctrine of equivalents.

25 **FOURTH CLAIM FOR RELIEF**

26 **(Declaration of Invalidity of U.S. Patent No. 7,114,297)**

27 28. Plaintiffs reallege and incorporate by reference the allegations of
28 paragraphs 1 through 27, inclusive, as though fully set forth.

29. Each claim of the '297 patent is invalid because the patent and the alleged invention therein fails to comply with the requirements of 35 U.S. §§ 101 *et seq.*, including but not limited to, 35 U.S.C. §§ 102, 103 and 112.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

- (a) That the Court enter judgment in favor of Plaintiffs and against PCS;
- (b) An adjudication that PCS has infringed and continues to infringe the Last Patents as alleged above;
- (c) An accounting to determine damages from PCS' patent infringement;
- (d) An award of damages for PCS' patent infringement;
- (e) An assessment and award of interest, including prejudgment interest, on the patent infringement damages determined;
- (f) A trebling of the patent infringement damages pursuant to 35 U.S.C. § 284;
- (g) A declaratory judgment that AMCS is not liable for infringement of the '297 patent;
- (h) A declaratory judgment that the claims of the '297 patent are invalid;
- (i) A finding that this case is an exceptional case and an award of Plaintiffs' costs and attorney fees pursuant to 35 U.S.C. § 285;
- (j) A permanent injunction preventing further infringement, contributory infringement and inducement of infringement of the Last Patents; and
- (k) Such other and further relief as the Court deems proper and just.

Dated: May 19, 2009

LAW OFFICE OF DEREK A. ELETICH

By: 

DEREK A. ELETICH

Attorney for Plaintiffs
HARRY J. LAST and AMCS, INC.

1 **DEMAND FOR JURY TRIAL**

2 Plaintiffs HARRY J. LAST and AMCS, INC. hereby demand trial by jury of all
3 issues triable by right of jury.

4 Dated: May 19, 2009

LAW OFFICE OF DEREK A. ELETICH

5
6 By: 

DEREK A. ELETICH

7
8 Attorney for Plaintiffs
9 HARRY J. LAST and AMCS, INC.
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